



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,

Ambavadi, Ahmedabad-380015



: 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/196/Ahd-II/2017-18  
Stay Appl.No. NA/2017-18

2473/0  
2477

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-458-2017-18  
दिनांक Date : 27-03-2018 जारी करने की तारीख Date of Issue

17/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/3570/AC/2017-Reb दिनांक: 28/11/2017 issued by  
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Anar Chemicals  
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को  
अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as  
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

### Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक  
के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली  
: 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first  
proviso to sub-section (1) of Section-35 ibid :

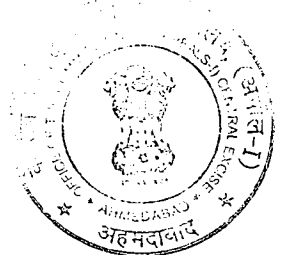
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के  
दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to  
another factory or from one warehouse to another during the course of processing of the goods in a  
warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of  
on excisable material used in the manufacture of the goods which are exported to any country  
or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs:200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

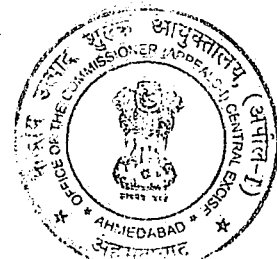
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute."



**ORDER IN APPEAL**

M/s Anar MCAT Advanced Electronics Chemical Pvt. Ltd., Plot No. 12-B, Phase-I, GIDC Estate, Vatva, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original No. MP/3570/AC/2017-Reb dated 28.11.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Central Tax, Div-III, Ahmedabad South Commissionerate, GST Bhavan, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief are that appellant had filed rebate claim of Rs. 1,52,522/- on 28.08.2017 in respect of ARE-1 No. 04/28.06.2017 u/r 18 of CER, 2002 r/w Notification No. 19/2004-CE dated 06.09.2004. Appellant did not file reply of SCN within seven days granted and also did not attend PH granted on 17.11.2017, 20.11.2017 and 21.11.2017 vide single intimation letter dated 10.11.2017, therefore case was decided ex-parte against the appellant. **Rebate was rejected on ground that original and duplicate ARE-1 was not signed by Customs Authority.**

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 20.02.2018 before the Commissioner Appeals, CGST, GST Bhavan, Ahmadabad wherein it is contended that-

- a. by pre-fixing 3 consecutive PH dates (span of 4 days) it can not be claimed that adjournment to 2<sup>nd</sup> and 3<sup>rd</sup> dates was sought by appellant and granted, therefore principal of natural justice is violated.
- b. Deficiency of absence of customs endorsement in ARE-1 was clear error, a procedural lapse capable of being cured and adjudicating authority could and ought to have returned the original and duplicate unsigned and unstamped ARE-1 copies for rectifying the lapse.

4. Personal hearing in the case was granted on 12.03.2018. Shree Pooja Shah, CA, appeared before me and reiterated the grounds of appeal. She stated that there is violation of natural justice. On being asked that I am giving that opportunity to prove their point she requested for one week time to submit additional submission which was submitted vide their letter dated 19.03.2018 along with customs certificated dated 17.03.2018.



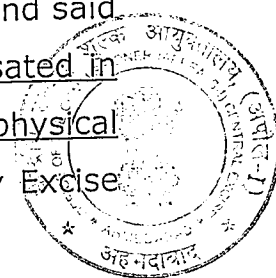
## DISCUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing. One day delay in filing appeal is condoned.

6. I find that very short span of just 7 days was given to reply of SCN. Further I find that there is pre-fixing 3 consecutive PH dates (span of 4 days) by single intimation letter and SCN is decided ex-parte in clear haste. I am of opinion that it can not be presumed that adjournment to 2<sup>nd</sup> and 3<sup>rd</sup> dates was sought by appellant. Since principal of natural justice was not complied, one week time to produce evidences was granted as requested by the appellant during the course of hearing on 12.03.2018.

7.1 Further I find that whole claim is rejected on ground that original and duplicate ARE-1 was unsigned and unstamped by customs authority. Requirement/condition of Notification No. 19/2004- CE (NT) is that rebate claim is required to be filled with Original and Duplicate Copy of ARE-1 duly endorsed and stamped by the Customs authority. Said Requirement/condition of Notification No. 19/2004- CE (NT) is not satisfied therefore rebate claim was rejected by the adjudicating authority.

7.2 I find that the export consignment has been handled in a very casual manner and the same approach continuous even in filing of the appeal, SB copy produced in very faint and not legible and difficult to read the details. I find appellant had produced the certificate F. No. VIII/48-79/ICD/MISC /2017/ 2017 Pt. III dated 17.03.2018 from the Superintendent, Customs, ICD, Khodiyar, Gandhiagar, certifying that goods weighing 3916.80 kg (gross)/ 3825 kg (net) in respect of ARE-1 No. 04/17-18 DATED 28.06.2017 has been exported vide SB No. 7060975/ 30.06.2017 on 03.07.2017. I find that Customs authority has issued certificate after laps of almost nine months but it does not certify that goods were examined or inspected it merely reiterates the facts already available in the shipping bill. I find that said certificate do not show that goods were examined by customs before exportation and said ARE-1's are not endorsed by customs. Further I find that it is sated in said SB that ..."This consignment was not opened for physical examination by customs" and that it ARE-1's are not signed by Excise



authority also. In view of this I am not inclined to extend the benefits to exporter. I deny the rebate claim of Rs. 1,52,522/- and uphold the impugned OIO.

8. In view of above, appeal filed by the appellants is rejected.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

*R.R. Patel*

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s Anar MCAT Advanced Electronics Chemical Pvt. Ltd.,

Plot No. 12-B, Phase-I,

GIDC Estate, Vatva, Ahmedabad

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST, Ahmedabad South.
- 3) The Asst. Commissioner, Central Tax, Div-III, Ahmedabad South
- 4) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 5) Guard File.
- 6) P.A. File.

